4 April 1975

George:

At our legislation meeting you asked that I modify the paper we prepared for Chairman Stennis on current legislation affecting CIA for inclusion in a package of material being prepared for the White House. Attached is the paper on legislation, which I have updated.

Don

CONGRESSIONAL OVERSIGHT PROPOSALS

The long-standing congressional oversight procedure of reporting on Agency operations only to the Armed Services and Appropriations Committees of both houses was significantly altered by the Foreign Assistance Act of 1974, which requires reporting on covert action to the foreign affairs committees of both Houses. This means six committees now receive reports on covert operations. Other, more far-reaching proposals have been introduced in the 94th Congress, and may receive major attention. The Senate Subcommittee on Intergovernmental Relations of the Committee on Government Operations held hearings on 9 and 10 December 1974 regarding CIA oversight. Senator Muskie, chairman of this subcommittee, announced additional hearings for early 1975, but apparently will defer to the Senate Select Committee.

Following are sketches of proposals to alter the permanent CIA oversight mechanism. All House bills on oversight have been referred to the Rules Committee. Jurisdiction of the Senate bills is split between the Armed Services, Government Operations, and Rules Committees.

1. Joint Committee on Intelligence Oversight (S. 317, H.R. 463)

Senators Baker and Weicker and twenty-five co-sponsors introduced the Senate proposal in the 93rd Congress and again in January. Senators

Baker and Weicker spoke in favor of their bill during the Muskie hearings last December. Representatives Frenzel and Steelman introduced the companion House bill. The Joint Committee on Intelligence Oversight would have fourteen members, appointed by the leadership, and the chairmanship would alternate between the House and Senate for each Congress. The legislative jurisdiction of the Committee would extend to CIA, FBI, Secret Service, DIA, NSA, and all other Governmental activities pertaining to intelligence gathering or surveillance of persons. Heads of all named departments would be required to keep the Committee fully and currently informed of all activities.

2. Joint Committee on National Security (S. 99, H.R. 54)

This bill was introduced in the 93rd and 94th Congresses by Senator Humphrey. Representative Zablocki is the House sponsor. The Senate bill was transferred from the Armed Services to the Government Operations Committee at Senator Humphrey's request during the 93rd Congress, and was considered during the Muskie hearings in December. Dr. Ray Cline, former CIA official and Director of the Bureau, spoke in favor of this proposal. S. 99 has been referred to the Armed Services Committee.

The Joint Committee on National Security would consist of the Speaker, Majority and Minority members of each house, the chairman

and ranking Minority members of the Armed Services, Appropriations, Foreign Affairs, Joint Atomic Energy Committees, three other Representatives, and three other Senators. Proposed functions of the Committee are to study foreign, domestic, and military national security policies, study the National Security Council, and study Government classification practices, and report periodically to each House on the Committee's findings. This bill would apparently not change any present jurisdiction (i.e., the Armed Services Committees would retain legislative jurisdiction); it would merely supplement it.

3. Joint Committee on the Continuing Study of the Need to Reorganize the Departments and Agencies Engaging in Surveillance (S. 189)

Senators Nelson, Jackson, and Muskie introduced this proposal. Senator Nelson introduced a similar proposal last Congress, and supported it during the Muskie hearings. This committee would be composed of eight Senators and eight Representatives, with an equal party split. The Committee would be empowered to study the need to reorganize U. S. agencies engaged in investigation or surveillance of individuals (citizenship not specified), the extent, methods, authority, and need for such investigation or surveillance, and the state-federal relationship in this area. The Joint Committee would not have jurisdiction to examine activities conducted outside United States, but may recommend means for Congress to oversee such extraterritorial activity.

4. Joint Committee on Information and Intelligence (S. Con. Res. 4)

Senator Hathaway is the sponsor of this proposal. It would create a fourteen-member joint committee to study the activities of each information and intelligence agency and their interrelationships.

5. Several other House bills or resolutions would create joint committees to assume CIA oversight and would either have members appointed by the leadership or drawn from specified committees (such as Armed Services, Appropriations, Foreign Affairs, Foreign Relations, and Government Operations). Among this group are H.R. 261, H. Con. Res. 18, H.R. 2232. H. Res. 51 would create a new standing committee of the House entitled the Committee on the Central Intelligence Agency.

6. Mr. Dellums has reintroduced the "Central Intelligence Agency Disclosure Act," H.R. 1267, amending certain statutory authorities to modify Agency exemptions in the area of reporting to Congress. The bill would impose a positive duty on the Agency to report to congressional committees and subcommittees upon request sensitive details on prospective activities (5 U.S.C. 2953), contracts (50 U.S.C. 1434), and covert funding (CIA Act of 1949, Section 8b)--information already available to appropriate oversight committees under current procedures. The Agency would also be required upon request to provide any substantive and operational

information to any congressional committee or subcommittee relating to any matter within its jurisdiction (CIA Act of 1949, Section 6). These provisions would proliferate sensitive information on Agency operations throughout the Congress and fragment oversight responsibilities.

NATIONAL SECURITY AND CIA ACT AMENDMENTS

Key Bills

During the 93rd Congress, Senator Stennis, Senator Proxmire, Representative Nedzi, and others introduced proposals to amend the CIA section of the National Security Act of 1947. Only Senator Proxmire (S. 244) and Representatives McCloskey (H.R. 628) and Dellums (H.R. 343) have introduced such bills in the 94th Congress. During the 93rd Congress, the Senate approved an amendment to the Fiscal 1975 Defense Authorization bill (H.R. 14592), which incorporated the Proxmire language, but the amendment was rejected in conference on the point of germaneness. Representative Nedzi held hearings on his bill in July 1974, but did not report out a bill. During the hearings, interest was expressed in the protection of intelligence sources and methods legislation, which had been proposed by the Director and which was in coordination within the Executive branch.

Various Provisions

Following are the specific proposed amendments to the Act which appear in one or more of the bills introduced in the 93rd or 94th Congress.

1. Insert the word "foreign" before the word "intelligence" in the Act, wherever it refers to the activities authorized to be undertaken by the Central Intelligence Agency (all but McCloskey bill);

2. Reiterate existing prohibitions against CIA assuming any police or law-enforcement powers, or internal-security functions (Stennis, Proxmire, Nedzi);

3. Enumerate permissable activities for the CIA in the United States:

(a) Protect CIA installations;

(b) Conduct personnel investigations of employees and applicants, and others with access to CIA information;

(c) Provide information resulting from foreign intelligence activities to other appropriate agencies and departments;

(d) Carry on within the United States activities necessary to support its foreign intelligence responsibilities.

The Stennis, Proxmire, and Nedzi bills include (a), (b), and (c), but only the Nedzi and Stennis bills include item (d), which is considered to be an essential proviso.

4. Require the CIA to report to Congress on all activities undertaken pursuant to section 102(d)(5) of the National Security Act (this proposal was somewhat overtaken by enactment of section 32 of P. L. 93-559 requiring Presidential finding and covert action reporting to six committees of the Congress--oversight committees and foreign affairs committees of both Houses);

5. Require the Director to develop plans, policies, and regulations in support of the present statutory requirement to protect intelligence sources and methods from unauthorized disclosure, and report to the Attorney General for appropriate action any violation of such plans, policies, or regulations. This requirement shall not be construed to authorize CIA to engage in expressly prohibited domestic activity (no police, subpoena, or law-enforcement powers, or internal-security functions) (Nedzi and Stennis);

6. Prohibit CIA from participating, directly or indirectly, in any illegal activity within the United States (Proxmire);

7. Prohibit transactions between the Agency and former employees, except for purely official matters (Nedzi);

8. Prohibit covert action (McCloskey and Dellums);

9. Limit the DCI to eight years in office (Dellums);

10. Provide that at no time could the positions of the Director and Deputy Director be occupied simultaneously by commissioned officers or individuals who were employed by CIA during the five years prior to their appointment (Dellums);

11. Require advance approval of the four oversight committees before providing assistance of any kind to any federal, state, or local governmental agency (Dellums).

PRIVACY

The 93rd Congress enacted landmark privacy legislation, which will become effective in September 1975 (P. L. 93-579). The law grants to American citizens or permanent resident aliens access to Government records concerning them. It also requires agencies to establish procedures for the protection of such information and the correction of inaccurate information, and restricts dissemination of information without prior approval of the individual.

In drafting the legislation, Congress recognized the sensitivity of CIA records, and exempted the Agency from most of the provisions of the law, including granting access to Agency records. In order to gain the exemption, CIA must follow standard Federal Government rule-making procedures. These procedures require the Agency to develop tentative rules governing access to records, and publish them in the

Federal Register. The public has thirty days to submit written comments for Agency consideration before the rules are final.

The provisions of the law applicable to CIA require the Agency to disseminate records on individuals only for specific enumerated purposes, maintain a listing of each disclosure of a record for at least five years, and publish in the Federal Register annually a general description of our systems of personal records. The records of all Federal agencies (including CIA) are subject to inspection by the Privacy Protection Study Commission, a nonregulatory two-year study commission established by the law. The House floor statement on final passage acknowledged that the Commission is not to impair the responsibility of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure.

The CIA exemption was quite controversial in the House, where Representative Abzug led a floor fight to eliminate it. She argued that Agency records were sufficiently protected by a general exemption restricting access to records "specifically authorized ... to be kept secret in the interest of national defense or foreign policy." Such language is not broad enough to assure protection of intelligence sources and methods. Representative Abzug is now Chairperson of the House Government Operations Subcommittee on Government Information and Individual Rights which has jurisdiction over the Privacy and Freedom of Information Acts.

She has introduced legislation (H.R. 169, H.R. 2635) to abolish our exemption, and held a well-publicized hearing on this subject on March 5, at which the Director testified.

SURVEILLANCE

Twenty-two bills have been introduced to date concerning electronic surveillance. These can be resolved into two main classes. One class aims at barring Armed Forces domestic surveillance. The other, at restricting or prohibiting electronic surveillance conducted on national security grounds.

A. Armed Forces Surveillance

The Agency's interest in legislation prohibiting domestic military surveillance is limited to the concern that over-breadth of language will inhibit CIA's collection of foreign intelligence. Specifically, the Agency's Domestic Collection Division, as a service of common concern, uses some military officers to conduct interviewing of citizens who volunteer information on foreign areas to their Government. The following bills are so drafted that if broadly construed they might inhibit these activities.

Senator Mathias' S. 84 is now pending before the Senate Judiciary Committee; the companion bill, H.R. 142, introduced by Mr. Kastenmeier, and five identical or similar bills are pending before the House Subcommittee on Courts, Civil Liberties, and the Administration of Justice. These bills

would prohibit any Government civilian employee or members of the Armed Services from causing any part of the Armed Forces to conduct investigations into, maintain surveillance over, or maintain records regarding the beliefs, associations, political activity, or private and business affairs of American citizens. Mr. Yates introduced H.R. 1185, which is pending before the House Armed Services Committee. This bill would prohibit any member of the Armed Forces from collecting, distributing, or storing any information pertaining to the political or social beliefs, actions, or affiliations of any person within the United States.

B. National Security Surveillance

The 1968 Omnibus Crime Control and Safe Streets Act (18 U.S.C. 2511, et seq.) established certain procedures which require the Government to obtain a court order issued on probable cause prior to conducting wire or oral communication interception in the investigation of certain offenses. In section 2511(3) of that Act, Congress specifically disavows any limitation on the constitutional powers of the President in national security matters and recognizes that the President has inherent constitutional authority to engage in certain foreign intelligence activities:

> [n]othing contained in this chapter or in section 605 of the Communications Act of 1934 shall limit the constitutional power of the President ... to obtain

> foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities. (emphasis added)

The emphasized language implicitly recognizes that foreign intelligence surveillances may be distinguished from national security surveillances aimed at the discovery and prosecution of criminal conspiracies and activity.

There are those who believe that the provisions of 18 U.S.C. 2511(3) are incompatible with Fourth Amendment rights. This sentiment has spawned a Senate bill and a dozen House bills (some of these identical) which aim at closing what the sponsors view as "the national security loophole" in current electronic surveillance laws. Unfortunately, these bills treat national security cases under a single rubric, failing to differentiate between the gathering of foreign positive intelligence generally, on the one hand, and operations designed to discover criminal activities or foreign action that will have a direct and immediate impact on the national defense, on the other.

The bills introduced in this area use terms of art and impose standards which would severely restrict the gathering of foreign intelligence within the United States by means of electronic surveillance targetted against a foreign power or its agent. For example, an operation mounted

against a foreign target within the United States to gather important economic intelligence would apparently not meet the probable cause standards, there being no direct undermining of the national defense.

Senators Nelson and Kennedy introduced S. 743, now pending before the Senate Judiciary Committee, which would repeal 18 U.S.C. 2511(3). The bill prohibits the Government from intercepting the communications of a foreign power or its agents until it has obtained a judicial warrant by establishing probable cause (a) that such interception is necessary to protect the military security or national defense; (b) that the interception would not be inconsistent with the international obligations of the United States; and (c) that the target is a foreign power or foreign agent. A foreign agent is defined as any person, not an American citizen or alien lawfully admitted for permanent residence, whose activities are intended to serve the interests of a foreign power and to undermine the national defense. Upon court approval, only the FBI would be authorized to intercept the communication. A similar bill, H.R. 141, was introduced by Representative Kastenmeier, and is now pending before his Subcommittee on Courts, Civil Liberties, and the Administration of Justice. Like S. 743, it would repeal 18 U.S.C. 2511(3) and amend Title 18 to permit communications interception only under court order issued on probable cause that an individual has committed or is about to commit one of several

enumerated offenses or that an individual is a foreign agent. A foreign agent is defined as a person engaged in activities which are intended to serve the interests of a foreign principal and to undermine the national security. Mr. Kastenmeier has also introduced a bill (H.R. 1864) which would prohibit except where otherwise required by statute civilian U. S. employees from conducting investigations into, maintaining records regarding the beliefs; associations; political activities; or financial, medical, sexual, marital, or familial affairs of any citizen or organization of citizens.

Since Mr. Mosher introduced H.R. 214, five identical bills have been introduced co-sponsored by over fifty Congressmen from both parties. These bills would prohibit any interception of communications, surreptitious entry, mail-opening, or the inspection of and procuring of the records of telephone, bank, credit, medical, or other business or private transactions of any individual without court order issued on probable cause that a crime has been committed. In addition, like S. 743 and H.R. 141, this bill would repeal 18 U.S.C. 2511(3). It would also strike out provisions for summary procedures for intercepting communications in certain emergencies subject to retroactive review.

Mr. Drinan proposes (H.R. 1603) to prohibit under all circumstances any interception of oral or wire communications.

FINANCIAL DISCLOSURE

Bills introduced in both Houses would require Federal employees receiving specified salaries (e.g., above $25,000 per year) to file financial statements with the Comptroller General. One bill (S. 192) would only require a statement of assets and liabilities, while most of the bills require a listing of:

(a) amount and source of each item of income and gift over $100;

(b) value of each asset held by him solely or jointly with his wife;

(c) amount of each liability owed;

(d) all dealings in securities or commodities;

(e) all purchases and sales of real property.

The public is to be granted access to the statements. Criminal penalties are prescribed for willfully filing false statements or failing to file a statement.

These proposals directly conflict with Section 6 of the CIA Act of 1949, which states that "the Agency shall be exempted from the provisions of ... any other law which require(s) the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency." They would also raise very serious security problems, and are contrary to the spirit of privacy so recently endorsed by the Congress.

GENERAL ACCOUNTING OFFICE AUDITS

Senator Proxmire has introduced S. 653, amending the Budget and Accounting Act of 1921. This bill would authorize those congressional committees with legislative oversight of the intelligence agencies to require the General Accounting Office to audit the accounts and operations of the intelligence agencies. The legislation states this audit shall be conducted notwithstanding the provision of section 8(b) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403).

Section 102(d)(3) of the National Security Act of 1947 (50 U.S.C. 403) charges the Director of Central Intelligence with protecting Intelligence Sources and Methods from unauthorized disclosure. One of the key statutory tools assisting the Director in this pursuit is section 8, which would be severely eroded by enactment of S. 653. Section 8(b) states:

> "(b) The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds; and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified."